

Memorandum 97-43**Severance of Joint Tenancy by Dissolution of Marriage:
Draft Recommendation**

The staff has prepared a revised Draft Recommendation relating to Severance of Joint Tenancy by Dissolution of Marriage (attached). The revised draft incorporates the following decisions made at the May meeting:

- (1) The proposal should not include language reviving a marital joint tenancy severed by operation of the proposal on remarriage of the former spouses to each other.
- (2) The proposal should include a definition of “dissolution or annulment” that is as consistent with the definition of dissolution or annulment under the Probate Code as is practicable.

Implementation of the first decision is straightforward. This memorandum discusses problems in implementing the second.

DEFINITION OF “DISSOLUTION OR ANNULMENT”

In its letter of April 24, 1997, the Executive Committee of the State Bar Estate Planning, Trust, and Probate Law Section suggested that the proposal should include a statutory definition of “dissolution or annulment” (hereinafter divorce), and that this definition should be modeled closely on the definition of divorce effective to revoke a spousal disposition in a will under Probate Code Section 6122. See the First Supplement to Memorandum 97-18. Under Section 6122, the effectiveness of a divorce to revoke a spousal disposition in a will is determined by reference to whether the divorce is effective to exclude a person as a surviving spouse under Probate Code Section 78. See Prob. Code § 6122(d). This rule makes sense, as other spousal inheritance rights are also conditioned on whether a person is a “surviving spouse.” See, e.g., Prob. Code §§ 6401 (intestate share of surviving spouse), 6540 (surviving spouse entitled to family allowance during administration of estate), 6560 (share of surviving spouse who is omitted from a will).

Probate Code Section 78 defines “surviving spouse” negatively, by listing circumstances that exclude a person as a surviving spouse:

“Surviving spouse” does not include any of the following:

(a) A person whose marriage to the decedent has been dissolved or annulled, unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death.

(b) A person who obtains or consents to a final decree or judgment of dissolution of marriage from the decedent or a final decree or judgment of annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they (1) subsequently participate in a marriage ceremony purporting to marry each to the other or (2) subsequently live together as husband and wife.

(c) A person who, following a decree or judgment of dissolution or annulment of marriage obtained by the decedent, participates in a marriage ceremony with a third person.

(d) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

Problems with Adopting Probate Code Definition

There are two problems with determining the effectiveness of a divorce to sever a marital joint tenancy by reference to whether that divorce would exclude a person as a surviving spouse under Section 78:

(1) Revival on Remarriage. Under a definition of “divorce” incorporating Section 78, a divorce that is apparently effective to sever a joint tenancy could later be determined not to be a “divorce” and therefore not to have severed the joint tenancy, if the former spouses are remarried to each other at the time of one of their deaths. See Prob. Code § 78(a). In effect, this is a revival on remarriage provision.

If the Commission decides to define a “divorce” effective to sever a joint tenancy by reference to whether the divorce is effective to exclude a person as a surviving spouse under Section 78, it will be necessary to protect third parties who rely on an apparently severed joint tenancy that is later revived by remarriage. The language in proposed Family Code Section 2651(c) should be sufficient to do so. See Revised Draft, p. 7.

(2) Effect of an Invalid Divorce. As a matter of policy, an invalid divorce (i.e., a divorce granted by a court without proper jurisdiction) should not affect inheritance rights. This is the general rule of Section 78. This rule is qualified, however, by the doctrine of equitable estoppel, under which a person who has

obtained, aided another in obtaining, or remarried in reliance on an invalid divorce may not contest its validity. See 11 B. Witkin, *Summary of California Law Husband & Wife* §§ 110-13, at 129-34 (9th ed. 1990). Section 78 codifies much of the substance of this estoppel doctrine. See Prob. Code § 78(b), (c).

In the context of joint tenancy this codified estoppel exception would swallow the general rule that an invalid divorce should have no effect. This is because unilateral severance of a joint tenancy affects the title of both joint tenants. Thus, if *either* spouse obtains an invalid divorce, that spouse is excluded as a surviving spouse under Section 78, and the invalid divorce would therefore be effective to sever a joint tenancy as to *both* spouses. The only exception would be where the spouses subsequently purport to remarry each other or live together as husband and wife. See Prob. Code § 78(b). This raises the same revival on remarriage problem discussed above.

This result is inconsistent with the substance of the codified estoppel exception in Section 78 as applied to other inheritance rights. Under the exception, an invalid divorce does not exclude a person as a surviving spouse if that person did not obtain, consent to, or remarry in reliance on the invalid divorce. In other words, an innocent spouse's rights are unaffected by an invalid divorce. In the context of joint tenancy, an invalid divorce would terminate survivorship as to both spouses, innocent or not.

Alternative Language

The staff believes that the following language in proposed Family Code Section 2651 is consistent with the substance of Section 78 regarding the effect of an invalid divorce:

§ 2651. (a) Subject to the limitations of this section, a valid final judgment of dissolution or annulment of marriage severs a joint tenancy as between the parties to the dissolution or annulment. Legal separation is not dissolution for the purpose of this section.

...

Comment. A judgment of dissolution or annulment of marriage that is not recognized as valid in California does not sever a joint tenancy. See subdivision (a). However, under the doctrine of equitable estoppel, a person who obtains, aids another in obtaining, or remarries in reliance on an invalid judgment of dissolution or annulment of marriage may be barred from disputing the validity of that judgment in applying this section. See 11 B. Witkin, *Summary of California Law Husband & Wife* §§ 110-13, at 129-34 (9th ed. 1990).

This language is generally consistent with the substance of Probate Code Section 78. It establishes a general rule that an invalid divorce is ineffective to sever a joint tenancy, but recognizes that a person who obtains, aids another in obtaining, or remarries in reliance on an invalid divorce may be estopped from disputing its validity. This would not affect the rights of a surviving spouse who did not obtain, aid another in obtaining, or remarry in reliance on an invalid divorce.

STAFF RECOMMENDATION

The staff recommends that the proposal not include a definition of “divorce” modeled on the definition in Probate Code Section 6122. To do so would provide consistent language, but inconsistent results. Instead, the staff recommends the language proposed above. Such a rule is consistent with the substance of the Probate Code definition in that an invalid divorce is ineffective to terminate spousal inheritance rights, except as appropriate under the doctrine of equitable estoppel. This also preserves the Commission’s decision that remarriage of former spouses to each other should not revive a joint tenancy severed by their prior divorce.

Respectfully submitted,

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SEVERANCE OF JOINT TENANCY BY DISSOLUTION OF MARRIAGE

1 Many spouses choose to acquire marital property in joint tenancy form.¹
2 Avoidance of probate on the death of a spouse, through operation of joint tenancy
3 survivorship, accounts in part for the popularity of joint tenancy title among
4 spouses.² However, common sense suggests that spouses do not consider or
5 anticipate the potential effect of joint tenancy survivorship after a dissolution or
6 annulment of marriage. After dissolution or annulment most parties probably
7 intend their estate to pass to their devisees or heirs.³ This is particularly likely
8 where the decedent has children from a previous marriage. In the relatively rare
9 case where a person dies after dissolution or annulment of marriage but before
10 property division, this intention is frustrated by joint tenancy survivorship, by
11 which the decedent's interest passes entirely to the decedent's former spouse.

12 The Commission proposes that, unless the parties have agreed otherwise, or a
13 court orders otherwise, dissolution or annulment of marriage will sever a marital
14 joint tenancy, resulting in a tenancy in common. A deceased party's cotenancy
15 interest will then pass to the decedent's devisees or heirs rather than to the
16 decedent's former spouse.

EXISTING LAW

17
18 The distinguishing feature of joint tenancy is the right of survivorship. On the
19 death of one joint tenant the decedent's interest in the joint tenancy property is
20 terminated and the surviving joint tenant owns the entire estate. An attempt on the
21 part of a joint tenant to devise an interest in joint tenancy property is therefore
22 ineffective.⁴

23 A joint tenancy may be severed, converting the joint tenancy into a tenancy in
24 common, with no right of survivorship.⁵ Severance can occur in a number of
25 ways.⁶ However, dissolution or annulment of marriage alone does not sever a
26 marital joint tenancy.⁷

1. See Fam. Code § 750 (husband and wife may hold property as joint tenants); Civ. Code § 683 (joint tenancy may be created in real and personal property).

2. See Sterling, *Joint Tenancy and Community Property in California*, 14 Pac. L.J. 927, 929 (1983).

3. Of course, some divorcing parties may wish property to pass to their former spouse. These parties, who are probably few in number, can easily reestablish a joint tenancy after divorce or can provide for a former spouse by devise or other means.

4. See 4 B. Witkin, *Summary of California Law Real Property* § 257, at 459-60 (9th ed. 1987).

5. *Id.* §§ 276-78, at 475-77.

6. *Id.* See also Civ. Code § 683.2 (severance of joint tenancy in real property).

7. Estate of Layton, 44 Cal. App. 4th 1337, 1343, 52 Cal. Rptr. 2d 251, 255. Note that division of marital property on dissolution or annulment of marriage may sever marital property held in joint tenancy form. See Fam. Code § 2650.

1 There is a presumption, on dissolution of marriage, that property acquired during
2 marriage in joint form is community property regardless of the form of title.⁸ This
3 presumption substantially limits the scope of the problem addressed by this
4 recommendation. However, there are two circumstances in which the problem still
5 arises:

6 (1) Where the community property presumption is adequately rebutted.

7 (2) Where one spouse dies and the presumption is inapplicable because
8 the dissolution of marriage preceded the death of the former spouse by
9 four years or more.⁹ In such a case the form of title presumption applies¹⁰
10 and property acquired during marriage in joint tenancy form is presumed
11 to be a true joint tenancy.¹¹

12 SEVERANCE OF MARITAL JOINT TENANCY BY 13 DISSOLUTION OR ANNULMENT OF MARRIAGE

14 Severance of a marital joint tenancy on dissolution or annulment of marriage
15 would effectuate the intent of most parties and would conform the treatment of
16 joint tenancy to the treatment given by California law to other spousal property
17 dispositions.

18 **Effectuating Intent of Parties**

19 A party will not generally want marital property to continue in joint tenancy
20 form after dissolution or annulment of marriage. As one court noted, it is illogical
21 to think that a party awaiting division of marital property would intend the
22 continued operation of survivorship, where an “untimely death results in a windfall
23 to the surviving spouse, a result neither party presumably intends or anticipates.”¹²
24 The court went on to observe that concerns about the operation of survivorship
25 after divorce should be addressed by the Legislature.¹³

8. Fam. Code § 2581. Note that the death of a former spouse does not preclude application of this presumption where a court has previously entered a judgment of dissolution or annulment with jurisdiction over property matters reserved. See *In re Marriage of Hilke*, 4 Cal. 4th 215, 219-21, 841 P.2d 891, 893-95, 14 Cal. Rptr. 2d 371, 373-75 (1992).

9. See Fam. Code § 802

10. See *Estate of Blair*, 199 Cal. App. 3d 161, 167, 244 Cal. Rptr. 627, 630 (1988) (“For purposes of determining the character of real property on the death of one spouse, there is a presumption ‘that the property is as described in the deed and the burden is on the party who seeks to rebut the presumption.’”).

11. See, e.g., *Estate of Layton*, 44 Cal. App. 4th at 1339-41, 52 Cal. Rptr. 2d at 253-54 (1996).

12. See *Estate of Blair*, 199 Cal. App. 3d at 169-70, 244 Cal. Rptr. at 631-32 (1988). The *Blair* court’s belief that divorcing parties will not ordinarily desire continued operation of survivorship has been echoed by other courts considering similar situations. See, e.g., *In re Marriage of Allen*, 8 Cal. App. 4th 1225, 1231, 10 Cal. Rptr. 2d 916, 919 (1993) (operation of survivorship after divorce not “consistent with what the average decedent and former spouse would have wanted had death been anticipated”).

13. *Estate of Blair*, 199 Cal. App. 3d at 169, 244 Cal. Rptr. at 632. See also *Estate of Layton*, 44 Cal. App. 4th at 1344, 52 Cal. Rptr. 2d at 256 (“[C]oncerns about divorcing parties’ expectations regarding joint tenancy survivorship fall more suitably within the domain of the Legislature.”).

1 It is particularly unlikely that a party will wish joint tenancy survivorship to
2 continue after dissolution or annulment of marriage where the party has children
3 by a former marriage.¹⁴ So long as property remains in joint tenancy form it cannot
4 pass to these children by intestacy or devise. Instead, on the party's death it will
5 pass to the party's former spouse.

6 **Treatment of Other Types of Revocable Spousal Dispositions**

7 In California, as in many states, the dissolution or annulment of a person's
8 marriage automatically revokes a disposition to a former spouse in the person's
9 will.¹⁵ To do otherwise would be contrary to what the typical person would have
10 wanted had the person thought about the matter. In most cases where a person fails
11 to change a will following dissolution of marriage, the failure is inadvertent.¹⁶

12 A divorcing party would also likely revoke a spousal disposition in a will
13 substitute such as marital joint tenancy. This is the rationale of Uniform Probate
14 Code Section 2-804, which attempts to unify the treatment of probate and non-
15 probate transfers on divorce. Under Section 2-804, dissolution or annulment of
16 marriage automatically revokes spousal dispositions in a will, and in a wide range
17 of will substitutes — including marital joint tenancy.¹⁷ Eight states have
18 substantially adopted Section 2-804 since 1993.¹⁸

19 Many other states have implemented this general policy in a piecemeal fashion
20 by adopting measures that revoke specific spousal dispositions on dissolution or
21 annulment of marriage. For example, five states sever a marital joint tenancy on
22 dissolution or annulment of marriage.¹⁹ Other spousal dispositions revoked by
23 dissolution or annulment of marriage include inter-vivos trusts²⁰ and life insurance
24 beneficiary designations.²¹

14. Note that remarriage and reconstituted families are increasingly common. See Waggoner, *Spousal Rights in Our Multiple-Marriage Society: The Revised Uniform Probate Code*, 26 Real Prop. Prob. & Tr. J. 683, 685-87 (1992).

15. See Prob. Code § 6122.

16. *Tentative Recommendation Relating to Wills and Intestate Succession*, 16 Cal. L. Revision Comm'n Reports 2301, 2325 (1982).

17. See Unif. Prob. Code § 2-804 (1993). "The severance of spousal joint tenancies upon divorce merely applies the general principle ... that all revocable dispositions are presumptively revoked upon divorce." See Waggoner, *Spousal Rights in Our Multiple-Marriage Society: The Revised Uniform Probate Code*, 26 Real Prop. Prob. & Tr. J. 683, 689-701 (1992). Revocation of spousal dispositions on divorce gives "effect to the average owner's presumed intent...." See McCouch, *Will Substitutes Under the Revised Uniform Probate Code*, 58 Brook. L. Rev. 1123, 1161-63 (1993).

18. See Alaska Stat. § 13.12.804 (1996); Ariz. Rev. Stat. Ann. § 14-2804 (1995); Colo. Rev. Stat. § 15-11-804 (1996); Haw. Rev. Stat. § 560:2-804 (1996); Mont. Code. Ann. § 72-2-814 (1993); N.M. Stat. Ann. § 45-2-804 (1995); N.D. Cent. Code § 30.1-10-04 (2-804) (1995); S.D. Codified Laws Ann. § 29A-2-804 (1996).

19. Conn. Gen. Stat. § 47-14g (1995); Mich. Comp. Laws § 552.102 (1988); Minn. Stat. § 500.19 (1990); Ohio Rev. Code Ann. § 5302.20(c)(5) (1996); Va. Code Ann. § 20-111 (1996).

20. See, e.g., Ohio Rev. Code Ann. § 1339.62 (1996).

21. See, e.g., *id.* § 1339.63 (1996).

1 In California, dissolution or annulment revokes the designation of a spouse as
2 attorney-in-fact²² and the designation of a spouse as a death benefit beneficiary
3 under the Public Employees' Retirement law.²³

4 All of these provisions, whether revoking a spousal disposition in a will or will
5 substitute, embody the same policy assumption — that a divorcing party would not
6 intentionally maintain a disposition to the party's spouse. These statutes, and the
7 reform proposed in this recommendation, protect a divorcing party's intentions by
8 revoking a revocable spousal disposition on dissolution or annulment of marriage.

9 **Consistency with Treatment of Community Property**

10 Under this proposal, dissolution or annulment of marriage severs a marital joint
11 tenancy, terminating the right of survivorship. This is consistent with the effect of
12 dissolution or annulment on intestate succession of community property.

13 Absent a will, a decedent's share of community property passes entirely to the
14 decedent's surviving spouse, without administration.²⁴ Therefore, in cases of
15 intestacy, community property passes in a manner similar to joint tenancy
16 survivorship.

17 On dissolution or annulment of marriage, community property that remains
18 undivided is treated as tenancy in common property.²⁵ Absent a will, a decedent's
19 interest in tenancy in common property passes by the general rules of intestate
20 succession — not to the decedent's former spouse.²⁶ In other words, dissolution or
21 annulment terminates the survivorship-like feature of community property.

22 **SUBSIDIARY POLICY ISSUES**

23 Implementation of the rule severing a marital joint tenancy on dissolution or
24 annulment of marriage requires resolution of three subsidiary issues.

25 **Legal Separation**

26 While it is clear that a judgment of legal separation may result in a division of
27 property as thorough as a dissolution or annulment of marriage,²⁷ it is not clear
28 that parties choosing legal separation over dissolution of marriage intend to
29 completely sever marital property and support arrangements. Legal separation

22 Prob. Code §§ 3722, 4154, 4727(e).

23. Gov't Code § 21492.

24. See Prob. Code §§ 6401 (intestate share of surviving spouse), 13500-13506 (passage of property to surviving spouse without administration).

25. This characterization is subject to later litigation and contrary characterization. See *Henn v. Henn*, 26 Cal. 3d 323, 330, 605 P.2d 10, 13, 161 Cal. Rptr. 502, 505 (1980).

26. See Prob. Code § 6402.

27. See, e.g., Fam. Code § 2550 (equal division of community estate available on dissolution of marriage or legal separation).

1 does not dissolve marital status.²⁸ Spouses may therefore choose legal separation
2 over dissolution in order to maintain rights contingent on marital status.

3 For example, under the Probate Code, “surviving spouse” includes legally
4 separated spouses, unless there has been an order dividing all marital property.²⁹
5 Therefore, if a court enters a judgment of legal separation, but does not divide all
6 marital property (the very facts this proposal would address), the separated spouses
7 retain statutory inheritance rights in each other’s separate property.³⁰ Also, as
8 discussed, a spousal disposition in a will is not revoked by legal separation.³¹
9 Neither are a designation as attorney-in-fact (other than for a federal absentee³²) or
10 Public Employees’ Retirement System death benefits.³³

11 Where parties choose legal separation in order to maintain existing marital
12 property and support arrangements, automatic severance of a joint tenancy would
13 be inappropriate. Because of the uncertainty as to legally separating parties’
14 intentions regarding existing marital arrangements, and in order to be consistent
15 with the treatment of spousal inheritance rights under the Probate Code, the
16 proposed law is not triggered by a judgment of legal separation.

17 **Multiple Party Accounts**

18 The proposed law does not apply to survivorship in a multiple party account for
19 two reasons:

20 (1) Severance of survivorship in a multiple party account is regulated
21 under the Probate Code as part of an integrated statutory scheme³⁴ and is
22 expressly excluded from the coverage of statutes governing the creation
23 and severance of a joint tenancy.³⁵

24 (2) The probability of funds in a multiple party account remaining
25 undivided after dissolution of marriage is low. Funds in a multiple party
26 account are fungible and can be freely withdrawn by either spouse.
27 Withdrawal of funds from a multiple party account terminates

28. See D. Samuels & F. Mandabach, *Practice Under the California Family Code: Dissolution, Legal Separation, Nullity* § 3.35, at 35-36 (Cal. Cont. Ed. Bar 1997).

29. See Prob. Code § 78.

30. See, e.g., Prob. Code §§ 6401 (intestate share of surviving spouse), 6540 (surviving spouse entitled to family allowance during administration of estate), 6560 (share of surviving spouse who is omitted from a will).

31. See Prob. Code § 6122.

32. This represents a special case. See Prob. Code § 3722. Obviously, a federal absentee (i.e., POW-MIA) cannot act to revoke a revocable disposition and special protections are justified.

33. See Prob. Code §§ 3722, 4154, 4727(e); Gov’t Code § 21492.

34. See Prob. Code § 5100 *et seq.* See also *Recommendation Relating to Nonprobate Transfers*, 16 Cal. L. Revision Comm’n Reports 129 (1982).

35. See Civ. Code § 683(b).

1 survivorship as to the funds withdrawn.³⁶ The need for reform in regard to
2 a multiple party account is therefore minimal.

3 **Effect on Third Parties**

4 It is necessary to protect third parties who lack knowledge of a severance by
5 operation of the proposed law or who rely on an apparently effective severance
6 that is in fact ineffective because contrary to an agreement of the spouses or a
7 court order, or because the dissolution or annulment that apparently severed the
8 joint tenancy is not recognized as valid in California. Examples of problems that
9 might arise if third parties are not protected include the following:

10 (1) H and W divorce, severing their joint tenancy. W dies. H presents
11 proof of W's death and of the joint tenancy title to a third party without
12 knowledge of the divorce. The third party, erroneously believing H to have
13 acquired title to the entire property by operation of survivorship, purports
14 to purchase the entire property. In fact, the third party purchases a tenancy
15 in common interest in the property, with W's estate as cotenant.

16 (2) H obtains a divorce in Nevada, apparently severing a joint tenancy
17 between H and W. Relying on proof of the divorce and of the joint tenancy
18 title, a third party purchases what appears to be H's tenancy in common
19 interest in the property. On H's death, W challenges the validity of the
20 Nevada divorce and the divorce is held invalid. The invalid divorce did not
21 sever the joint tenancy, and unless the conveyance was recorded, the
22 purchaser's interest is terminated by operation of survivorship on H's
23 death.

24 **CONFORMING REVISIONS**

25 Family Code Section 2024 requires that a petition for, or judgment of,
26 dissolution or annulment of marriage be accompanied by a written warning that
27 dissolution or annulment may revoke provisions of the parties' wills under Probate
28 Code Section 6122.³⁷ The warning alerts a person who wishes to retain the
29 revoked provisions that the person must act to do so.

30 The proposed law amends Family Code Section 2024 to include warnings of the
31 effect of dissolution or annulment of marriage on a marital joint tenancy, the
32 designation of a spouse as attorney-in-fact,³⁸ and the designation of a spouse as a
33 death benefit beneficiary under the Public Employees' Retirement System.³⁹

36. See Prob. Code § 5303(c).

37. Fam. Code § 2024.

38. See Prob. Code §§ 4154, 4727(e), 6122(b).

39. See Gov't Code § 21492.

PROPOSED LEGISLATION

1 **Fam. Code. § 2651 (added). Joint tenancy severed by dissolution or annulment of marriage**

2 SECTION 1. Section 2651 is added to the Family Code, to read:

3 2651. (a) Subject to the limitations of this section, a valid final judgment of
4 dissolution or annulment of marriage severs a joint tenancy as between the parties
5 to the dissolution or annulment. A legal separation is not a dissolution or
6 annulment for the purpose of this section.

7 (b) Dissolution or annulment of marriage does not sever a joint tenancy if a
8 written agreement of the joint tenants or a court order provides otherwise.

9 (c) Nothing in this section affects the rights of a subsequent purchaser or
10 encumbrancer for value in good faith who relies on an apparently effective
11 severance by operation of this section or who lacks knowledge of a severance by
12 operation of this section.

13 (d) This section does not affect survivorship in a “multiple party account” as
14 defined in Section 5132 of the Probate Code.

15 (e) This section only governs the effect of a judgment of dissolution or
16 annulment in an action commenced on or after January 1, 1999.

17 **Comment.** Section 2651 establishes the rule that a final judgment of dissolution or annulment
18 of marriage severs a joint tenancy between spouses. This reverses the common law rule. See
19 Estate of Layton, 44 Cal. App. 4th 1337, 52 Cal. Rptr. 2d 251 (1996). See also *In re Marriage of*
20 *Hilke*, 4 Cal. 4th 215, 841 P.2d 891, 14 Cal. Rptr. 2d 371 (1992); Estate of Blair, 199 Cal. App.
21 3d 161, 244 Cal. Rptr 627 (1988).

22 The date on which a judgment of dissolution is final for the purpose of terminating the marriage
23 relationship is governed by Sections 2339-2344. A judgment of dissolution or annulment of
24 marriage that is not recognized as valid in California does not sever a joint tenancy. See
25 subdivision (a). However, under the doctrine of equitable estoppel, a person who obtains, aids
26 another in obtaining, or remarries in reliance on an invalid judgment of dissolution or annulment
27 of marriage may be barred from disputing the validity of that judgment in applying this section.
28 See 11 B. Witkin, Summary of California Law *Husband & Wife* §§ 110-13, at 129-34 (9th ed.
29 1990).

30 This section applies to both real and personal property joint tenancies, and affects property
31 rights that depend on the law of joint tenancy. See, e.g., Veh. Code §§ 4150.5, 5600.5 (property
32 passes as though in joint tenancy). This section does not affect United States Savings Bonds,
33 which are subject to federal regulation. See 31 C.F.R. §§ 315.0-315.93, 353.0-353.92 (1996); see
34 also *Conrad v. Conrad*, 66 Cal. App. 2d 280, 152 P.2d 221 (1944) (federal regulations
35 controlling).

36 The method provided in this section for severing a joint tenancy is not exclusive. See, e.g., Civ.
37 Code § 683.2.

38 Subdivision (c) makes clear that nothing in this section affects the rights of a good faith
39 purchaser or encumbrancer who relies on an apparently effective severance by operation of this
40 section or who lacks knowledge of a severance by operation of this section. For purposes of this
41 subdivision, “knowledge” of a severance of joint tenancy includes both actual knowledge and
42 constructive knowledge through recordation of the judgment of dissolution or annulment. See
43 Civ. Code § 1213 (recordation as constructive notice to subsequent purchasers and mortgagees).
44 The remedy for a joint tenant injured by a transaction with an innocent purchaser or
45 encumbrancer is against the transacting joint tenant.

1 Subdivision (f) provides that this section has prospective effect only. This is an exception to the
2 Family Code's general transitional rule. See Section 4.

3 **Fam. Code § 2024 (amended). Notice concerning effect of judgment on will, insurance, and**
4 **other matters**

5 SEC 2. Section 2024 of the Family Code is amended to read:

6 2024. (a) A petition for dissolution of marriage, nullity of marriage, or legal
7 separation of the parties, or a joint petition for summary dissolution of marriage,
8 shall contain the following notice:

9 "Please review your will, insurance policies, retirement benefit plans, credit
10 cards, other credit accounts and credit reports, and other matters that you may
11 want to change in view of the dissolution or annulment of your marriage, or your
12 legal separation. However, some changes may require the agreement of your
13 spouse or a court order (see Part 3 (commencing with Section 231) of Division 2
14 of the Family Code). Dissolution or annulment of your marriage may
15 automatically change a disposition made by your will to your former spouse, may
16 automatically terminate your right of survivorship in marital property held in joint
17 tenancy with your former spouse, may automatically revoke a power of attorney
18 designating your spouse as your attorney-in-fact, and automatically revokes your
19 designation of a death benefit beneficiary under the Public Employees' Retirement
20 System."

21 (b) A judgment for dissolution of marriage, for nullity of marriage, or for legal
22 separation of the parties shall contain the following notice:

23 "Please review your will, insurance policies, retirement benefit plans, credit
24 cards, other credit accounts and credit reports, and other matters that you may
25 want to change in view of the dissolution or annulment of your marriage, or your
26 legal separation. Dissolution or annulment of your marriage may automatically
27 change a disposition made by your will to your former spouse, may automatically
28 terminate your right of survivorship in marital property held in joint tenancy with
29 your former spouse, may automatically revoke a power of attorney designating
30 your spouse as your attorney-in-fact, and automatically revokes your designation
31 of a death benefit beneficiary under the Public Employees' Retirement System."

32 **Comment.** Section 2024 is amended to refer to the effect of dissolution or annulment on a
33 spousal joint tenancy, the designation of a spouse as attorney-in-fact, and the designation of a
34 spouse as a death benefit beneficiary under the Public Employees' Retirement System. *See* Fam.
35 Code § 2651 (joint tenancy); Gov't Code § 21492 (Public Employees' Retirement System); Prob.
36 Code §§ 3722, 4154, 4727(e) (power of attorney).